Halaman Perdana Sdn Bhd v Pentadbir Tanah Daerah Hulu Selangor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO B-01–285–06 OF 2012
ALIZATUL KHAIR, ANANTHAM KASINATHER AND VARGHESE GEORGE JJCA
15 FEBRUARY 2016

Land Law — Acquisition of land — Compensation — Dissatisfaction and objections over amount of compensation — Matter referred to High Court for determination — High Court awarded, additional compensation and injurious affection for lands — Whether court had jurisdiction to hear appeal — Land Acquisition Act 1960 ss 38(1) & 40D

This appeal arose from the decision of the High Court judge in two land references for the acquisition of lands belonging to the applicant. The said lands were acquired under s 3 of the Land Acquisition Act 1960 ('the Act') for the purpose of 'Projek Lebuhraya Utara-Selatan Cadangan Persimpangan Bertingkat dan Plaza Tol Sungai Buaya, Bandar Serendah dan Mukim Serendah, Daerah Hulu Selangor, Negeri Selangor'. The applicant objected to the amount of compensation awarded and filed for the matter to be referred to High Court for determination, pursuant to s 38(1) of the Act ('the land reference proceedings'). Upon hearing the parties and having taken into consideration the opinion of the two assessors on the market value of the said lands, the High Court judge awarded, inter alia, additional compensation of RM1,675,583.77 for the said lands and RM777,825.70 for injurious affection in respect of the said lands. Hence, this appeal. The respondent had raised a preliminary objection that the court had no jurisdiction to hear the appeal in view of s 40D of the Act and the recent Federal Court decision in *Syed Hussain bin Syed Junid & Ors v Pentadbir Tanah Negeri Perlis and another appeal* [2013] 6 MLJ 626 ('Syed Hussain') and *Calamas Sdn Bhd v Pentadbir Tanah Batang Padang* [2011] 5 CLJ 125 ('Calamas').

Held, dismissing the appeal with costs:

(1) In view of the decision of the Federal Court in both *Calamas* and *Syed Hussain* which is binding on this court, this court has no jurisdiction to hear this appeal. As held by the Federal Court, the effect of s 40D(3) and the amendment to the proviso s 49(1) of the Act is to preclude any party from appealing against the order of compensation made by the High Court. Since the court had upheld the preliminary objection, it was necessary to hear the appeal on its merits (see paras 22–23 & 33).

(2) The constitutionality issue mounted by the applicant, in relation to ss 40D(3) and 49(1) of the Act and s 68(1)(d) of the Courts of Judicature Act 1964 ('the CJA'), was not raised as a ground of appeal in the applicant's memorandum of appeal nor was it raised before the High Court judge during the land reference proceedings. The issue was a substantive issue constituting a separate cause of action and can only be heard and determined upon a suit being filed to that effect in the court of first instance, namely the High Court. The applicant could not, in an appeal from a decision of the High Court pursuant to land reference proceedings under s 38 of the Act where the issue of constitutionality was not raised, mount a collateral attack on the constitutionality of ss 40D(3), 49(1) of the Act and s 68(1) of the CJA (see paras 24 & 27).

[Bahasa Malaysia summary

Rayuan ini berbangkit daripada keputusan hakim Mahkamah Tinggi dalam dua rujukan tanah bagi pengambilan tanah yang dimiliki pemohon. Tanah-tanah tersebut diambil alih di bawah s 3 Akta Pengambilan Tanah 1960 ('Akta') bagi tujuan 'Projek Lebuhraya Utara-Selatan Cadangan Persimpangan Bertingkat dan Plaza Tol Sungai Buaya, Bandar Serendah dan Mukim Serendah, Daerah Hulu Selangor, Negeri Selangor'. Pemohon membantah kepada jumalah pampasan yang diawardkan dan memfailkan bagi perkara dirujuk kepada Mahkamah Tinggi untuk penentuan, berikutan s 38(1) Akta ('prosiding rujukan tanah'). Setelah mendengar pihak-pihak dan mengambil kira pertimbangan pendapat dua penilai ke atas nilai pasaran tanah tersebut, hakim Mahkamah Tinggi mengawardkan, antara lain, pampasan tambahan sebanyak RM1,675,583.77 bagi tanah tersebut dan RM777,825.70 bagi kesan mudarat berkaitan tanah-tanah tersebut. Maka rayuan ini. Responden telah membangkitkan bantahan awalan bahawa mahkamah tidak mempunyai bidang kuasa untuk mendengar rayuan mengambil kira s 40D Akta dan keputusan Mahkamah Persekutuan baru-baru ini dalam kes *Syed Hussain bin Syed Junid & Ors v Pentadbir Tanah Negeri Perlis and another appeal* [2013] 6 MLJ 626 ('Syed Hussain') dan *Calamas Sdn Bhd v Pentadbir Tanah Batang Padang* [2011] 5 CLJ 125 ('Calamas').

Diputuskan, menolak rayuan dengan kos:

(1) Mengambil kira keputusan Mahkamah Persekutuan dalam kedua-dua kes *Calamas* dan *Syed Hussain* yang mana mengikat ke atas mahkamah ini, mahkamah ini tidak mempunyai bidang kuasa untuk mendengar rayuan ini. Seperti yang diputuskan oleh Mahkamah Persekutuan, kesan s 40D(3) dan pemindaan kepada peruntukan s 49(1) Akta adalah untuk menghalang mana-mana pihak daripada merayu terhadap perintah pampasan yang dibuat oleh Mahkamah Tinggi. Memandangkan mahkamah telah mengesahkan bantahan awalan, adalah perlu untuk mendengar rayuan atas meritnya (lihat perenggan 22–23 & 33).

(2) Isu keperlembagaan yang dibangkitkan oleh pemohon, berkaitan ss 40D(3) dan 49(1) Akta dan s 68(1)(d) Akta Mahkamah Kehakiman 1964 ('AMK'), tidak dibangkitkan sebagai alasan rayuan di dalam memorandum rayuan pemohon ataupun ia dibangkitkan di hadapan hakim Mahkamah Tinggi semasa prosiding rujukan tanah. Isu adalah isu substantif yang membentuk kausa tindakan berasingan dan hanya boleh didengar dan ditentukan setelah tindakan difailkan di mahkamah permulaan, iaitu Mahkamah Tinggi. Pemohon tidak dapat, dalam rayuan daripada keputusan Mahkamah Tinggi berikutan prosiding rujukan tanah di bawah s 38 Akta di mana isu keperlembagaan tidak dibangkitkan, merupakan serangan kolateral ke atas keperlembagaan ss 40D(3), 49(1) Akta dan s 68(1) AMK (lihat perenggan 24 & 27).]

Notes

For cases on compensation, see 8(3) *Mallal's Digest* (5th Ed, 2015) paras 2301–2355.

Cases referred to

Calamas Sdn Bhd v Pentadbir Tanah Batang Padang [2011] 5 CLJ 125, FC (folld)

Dato' Menteri Othman Baginda & Anor v Dato' Ombi Syed Alwi Syed Idrus [1981] 1 MLJ 29, FC (refd)

Dr Koay Cheng Boon v Majlis Perubatan Malaysia [2012] 3 MLJ 173; [2012] 4 CLJ 445, FC (refd)

Koriah bt Sudar v Pentadbir Tanah Kuala Langat [2013] 3 MLJ 695; [2013] 5 CLJ 571, CA (refd)

Salimuddin Ahammed v Rahim Sheik AIR 1926 Cal 1113, HC (refd)

Syed Hussain bin Syed Junid & Ors v Pentadbir Tanah Negeri Perlis and another appeal [2013] 6 MLJ 626, FC (folld)

Legislation referred to

Courts of Judicature Act 1964 ss 4, 68(1)(d)
Federal Constitution art 121(1B)(a), (1B)(b)
Land Acquisition Act 1960 ss 3, 12, 38(1), 40D, 49(1)
National Land Code Form G, Form N

Appeal from: Suit Nos 15–48 of 2011 and 15–49 of 2011 (High Court, Shah Alam).

Malik Imtiaz Sarwar (Pavendeep Singh with him) (Malik Imtiaz Sarwar) for the appellant.

Rafiqha Hanim Mohd Rosli (Assistant Legal Advisor, State Legal Advisor's Office, Selangor) for the respondent.

Alizatul Khair JCA:

INTRODUCTION

[1] This appeal arose from the decision of the learned High Court judge in two (2) land references namely suit Nos 15–48 of 2011 and 15–49 of 2011 awarding the appellant (the applicant in the court below) an additional compensation of RM1,675,583.77 for the acquisition of two (2) lots held under Grant 34719, Lot 4460 Mukim Serendah, Daerah Hulu Selangor, Selangor Darul Ehsan and Grant 93472, Lot 27507 Seksyen 20, Mukim Bandar Serendah, Daerah Hulu Selangor, Selangor Darul Ehsan (individually referred to as 'Lot 4460' and 'Lot 27507' respectively but collectively referred to as the 'said lands'); and additional compensation of RM777,825.70 for injurious affection of the said lands.

[2] The parties in this appeal will be referred to in their original capacity in the High Court.

SALIENT FACTS

[3] The applicant was the registered owner of the said lands. The category of land use of the said lands was 'building'. The applicant had obtained approvals from the relevant authorities to convert the said lands into residential and commercial areas (the applicant's project).

[4] The said lands were acquired under s 3 of the Land Acquisition Act 1960 ('the LAA') pursuant to *gazette* notification No 4284 dated 23 December 2010. The purpose of the acquisition was for 'Projek Lebuhraya Utara-Selatan Cadangan Persimpangan Bertingkat dan Plaza Tol Sungai Buaya, Bandar Serendah dan Mukim Serendah, Daerah Hulu Selangor, Negeri Selangor'.

[5] Pursuant to s 12 of the LAA, an enquiry was conducted by the land administrator. Upon conclusion of the enquiry, a written award in Form G was prepared by the land administrator in respect of the said lands which is as follows:

(a) Lot 4460

Pampasan Tanah: RM 4,453,137.00 (Tanah dinilai dengan harga RM 405,000.00 sehektar).

Penjejasan : RM 386,046.00

RM 4,839,183.00

(b). Lot 27507

Pampasan Tanah: RM 1,273,360.50 (Tanah dinilai dengan harga RM 405,000.00 sehektar).

Penjejasan : RM 567,028.35

RM 1,840,388.85

[6] The applicant objected to the amount of compensation awarded and filed written application in Form N to the land administrator pursuant to s 38(1) of the LAA for the matter to be referred to the High Court for its determination (the land reference proceedings).

[7] The land reference proceedings was presided by the learned judge and assisted by two (2) assessors, namely Pn Kartini, a government valuer and Pn Noorjila, a private valuer. Upon hearing the parties and having taken into consideration the opinion of the two (2) assessors on the market value of the said lands, the learned judge awarded, inter alia, *additional compensation of RM1,675,583.77* for the said lands and *RM777,825.70 for injurious affection* in respect of the said lands.

[8] Dissatisfied with the decision, the applicant appealed to the Court of Appeal. Hence this appeal.

THE APPEAL

[9] Before us, the applicant filed notice of motion via encl 12(a) for leave to include an affidavit affirmed by Chang Yao Kuang dated 9 September 2013 to have the documents annexed to his affidavit (exh 'A1') be admitted as further evidence in the appeal herein.

[10] At the outset of the hearing of the motion and the substantive appeal, learned counsel for the applicant informed the court that the respondent had raised a preliminary objection that the court has no jurisdiction to hear the appeal in view of s 40D of the LAA and the recent Federal Court decision in *Syed Hussain bin Syed Junid & Ors v Pentadbir Tanah Negeri Perlis and another appeal* [2013] 6 MLJ 626 (Permohonan Sivil No 08(f)-633–08 tahun 2012(R)) and *Calamas Sdn Bhd v Pentadbir Tanah Batang Padang* [2011] 5 CLJ 125.

[11] In the light of the preliminary objection ('PO') raised by the respondent we were constrained to deal with the PO first before hearing the appeal on its merits.

A PRELIMINARY OBJECTION

[12] Learned senior federal counsel ('SFC') on behalf of the respondent contended that this court has no jurisdiction to hear the appeal in view of s 40D of the LAA. This legal proposition is based primarily on two recent Federal Court decisions namely *Calamas Sdn Bhd v Pentadbir Tanah Batang Padang* [2011] 5 CLJ 125 and *Syed Hussain bin Syed Junid & Ors v Pentadbir Tanah Negeri Perlis and another appeal* [2013] 6 MLJ 626 (Permohonan Sivil No 08(f)-633–08 tahun 2012(R)).

[13] In *Syed Hussain bin Syed Junid & Ors*, the Federal Court in discussing the effect of s 40D of the LAA adopted the reasoning of the Federal Court in *Calamas*. Raus Sharif PCA speaking for the Federal Court observed as follows:

> 20 With the introduction of s 40D and the amendment to the proviso of s 49(1), the intention of the Parliament is very clear ie, to preclude any party from appealing against the order of compensation made by the High Court. The effect of the introduction of s 40D and the amendment to the provision of s 49(1) of the LAAwas discussed in *Calamas Sdn Bhd v Pentadbir Tanah Batang Padang* [2011] 5 CLJ 125. Hashim Yusoff FCJ speaking for the Federal Court said as follows:
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> > It is trite law that courts must give effect to the clear provisions of the law. In the instant appeal, I do not see anything ambiguous in ss. 40D(3) and 49(1) of the Act. In view of this, I am of the view that the appellant is precluded from appealing against the order compensation issued by the learned trial judge.
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> 21 We have no reason to depart from the above view.

[14] Learned SFC submitted that in this appeal the applicant's complaint was basically on the amount of compensation awarded by the High Court and not on the wrong principle of law applied by the High Court in its assessment and arriving at the amount of compensation. Thus it falls squarely within the scope of s 40D of the LAA and in view of the decision of the Federal Court above which is binding on this court, this court has no jurisdiction to hear the appeal as the applicant is preluded, by virtue of ss 40D(3) and 49(1) of the LAA from appealing against the order of compensation made in the land reference by the High Court.

[15] Learned counsel for the applicant on the other hand, argued that the appeal herein is not caught by s 40D(3) and the proviso to s 49(1) of the LAA for the following reasons:

(a) the right of the applicant to appeal against any decision of the High Court is guaranteed by art 121(1B)(a) of the Federal Constitution (the first reason); and

(b) even if the said provisions are constitutional, their purpose must be

understood by reference to the constitutional guarantee of access to justice and due process in art 8 of the Federal Constitution (the second reason).

[16] In respect of the first reason, learned counsel for the applicant relied on arts 121(1B)(a) and 121(1B)(b) of the Federal Constitution. Essentially learned counsel for the applicant's argument is that whilst art 121(1B)(b) of the Federal Constitution vests the Court of Appeal such further or other jurisdiction as may be conferred by federal law, its constitutionally vested jurisdiction under art 121(1B)(a) gives it the power to determine all appeals arising from the High Court without limitation.

[17] This implication arises from the plain and obvious meaning of arts 121(1B)(a) and (b) of the Federal Constitution. Therefore, it is not permissible to invoke s 68(1)(d) of the Courts of Judicature Act 1964 ('the CJA') to constrain the meaning of art 121(1B)(a) of the Federal Constitution. To that end, s 68(1)(d) of the CJA, ss 40D(3) and 49(1) of the LAA are unconstitutional.

[18] With respect to s 68(1)(d) of the CJA which stipulates that no appeal shall be brought to the Court of Appeal where a judgment or order of the High Court is expressly declared to be fixed by any written law for the time being in force, learned SFC in her written submission had referred to the case of *Koriah bt Sudar v Pentadbir Tanah Kuala Langat* [2013] 3 MLJ 695; [2013] 5 CLJ 571. The court in dismissing the appeal against the High Court's order of compensation, observed, inter alia, as follows:

> [17] *Section 40D of the Act and* s 68(1)(d) of the Courts of Judicature Act 1964 *are very clear and we must give effect to the unambiguously expressed intent of these sections*. In the case of *Dupont Steels Ltd v Sirs* [1980] 1 WLR 142, Lord Diplock had this to say:
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> > Where the meaning of the statutory words is plain and unambiguous it is not for the judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they consider that the consequences of doing so would be inexpedient or even unjust or immoral.
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> [18] It is trite that there is no right of appeal against the decision of a court of competent jurisdiction unless the right is expressly provided for. The right to appeal is a creature of statute. It cannot be given by mere implication. (See *Gurdev Kaur a/p Bhag Singh v BSN Commercial Bank (M) Berhad* [2002] MLJU 643; [2003] 1 CLJ 429, *Dr Koay Cheng Boon v Majlis Perubatan Malaysia* [2012] 3 MLJ 173; [2012] 4 CLJ 445 (FC) *Sia Cheng Soon & Anor v Tengku Ismail Tengku Ibrahim* [2008] 3 MLJ 753; [2008] 5 CLJ 201.
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> [19] *The Act, being a special legislation, setting out a self contained code, the general law on appeals is therefore impliedly excluded.*

(Emphasis added.)

[19] Learned counsel for the applicant countered that this aspect of the analysis of art 121(1B)(a) and (b) of the Federal Constitution was not considered by the Federal Court in *Dr Koay Cheng Boon v Majlis Perubatan Malaysia* [2012] 3 MLJ 173; [2012] 4 CLJ 445. Learned counsel's submitted that the Federal Court in the aforesaid case had adopted a narrow construction of art 121(1B) when it held that:

> The word 'jurisdiction' in art 121(1B) of the Constitution, in a narrow and strict meaning, merely confers on the Court of Appeal the authority and power to hear and determine appeals. Further, art 121(1B)(a) does not provide for the Court of Appeal to hear 'all' or 'any' appeals from the High Court. In the circumstances, the Court of Appeal's jurisdiction, in the present case, to hear appeals from the High Court should be exercised by reference to the CJA. It was clear from the reading of s 4 of the CJA that the legal status accorded to the CJA is much higher than any other Act of Parliament.

In doing so, the Federal Court had failed to apply the settled principles of constitutional interpretation, as decided by the Federal Court in *Dato' Menteri Othman Baginda & Anor v Dato' Ombi Syed Alwi Syed Idrus* [1981] 1 MLJ 29, that is, that constitutional provisions are to be interpreted broadly and dynamically.

[20] As for the second reason, learned counsel for the applicant submitted that even if the aforesaid provisions are constitutional their purpose must be understood by reference to the constitutional guarantee of access to justice and due process as provided in art 8 of the Federal Constitution. Thus, s 40D(3) and s 49(1) of the LAA cannot be read as precluding a right of appeal on misdirections of law. It is the applicant's counsel's contention that the right to appeal against a misdirection of law in the process of determining fair compensation is integral to an effective application of the guarantee of 'adequate compensation' under art 13(2) of the Federal Constitution. Learned counsel relied on the case of *Salimuddin Ahammed v Rahim Sheik* AIR 1926 Cal 1113, a decision of the Calcutta High Court which held that:

> In a matter like this which relates to the curtailment of a right of appeal, if there is the slightest doubt in one's mind, the benefit of that doubt should go to the party who seeks to appeal.

OUR DECISION

[21] We upheld the preliminary objection after hearing submissions from both counsel and learned SFC.

[22] We agree with learned SFC that in view of the decision of the Federal Court in both *Calamas* and *Syed Hussain bin Syed Junid & Ors* which is binding on this court, this court has no jurisdiction to hear this appeal.

[23] As held by the Federal Court the effect of s 40D(3) and the amendment to the proviso s 49(1) of the LAA is to preclude any party from appealing against the order of compensation made by the High Court.

[24] As regards the constitutional challenge mounted by the applicant, in relation to ss 40D(3), 49(1) of the LAA and s 68(1)(d) of the CJA, we note that this issue was not raised as a ground of appeal in the applicant's memorandum of appeal nor was it raised before the learned High Court judge during the land reference proceedings.

[25] For ease of reference we set out below ss 40D(3), 49(1) of the LAA and s 68(1)(d) of the CJA.

Section 40D(3) states:

> *Any decision made under this section is final and there shall be no further appeal to a higher court on the matter.*

Section 49(1) reads:

> Any person interested, including the Land Administrator and any person or corporation on whose behalf the proceedings were instituted pursuant to section 3 may appeal from a decision of the Court to the Court of Appeal and to the Federal Court.
>
> *Provided that where the decisions comprises an award of compensation there shall be no appeal therefrom*.; and

Section 68(1) of the CJA stipulates that:

> No appeal shall be brought to the Court of Appeal in any of the following cases:
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> (a) ...
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> (b) ...
>
> (c) ...
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> (d) *where, by any written law for the time being in force, the judgment or order of the High Court, is expressly declared to be final.* (Emphasis added.)

[26] Learned counsel for the applicant argued that whilst the issue relating to ss 40D(3), 49(1) of the LAA and s 68(1) of the CJA have been dealt with by the Federal Court in *Calamas* and *Syed Hussain bin Syed Junid & Ors* and by the

Court of Appeal in *Koriah Sudar* this was the first time that this court is confronted with these issues in the context of art 121(1B) of the Federal Constitution. Thus, whilst this court may be bound by the Federal Court's decision in *Calamas* and *Syed Hussein bin Syed Junid & Ors*, this court is not constrained from hearing and determining the issue of ss 40D, 49(1) of the LAA and 68(1)(d) of the CJA in the context of art 121(1B) of the Federal Constitution.

In other words learned counsel is inviting this court in the exercise of its appellate jurisdiction to determine the constitutionality of ss 40D(3), 49(1) of the LAA and s 68(1) of the CJA in the context of art 121(1B) of the Federal Constitution.

[27] In our view the issue of the constitutionality of ss 40D(3), 49(1) of the LAA and s 68(1) of the CJA is a substantive issue constituting a separate cause of action and can only be heard and determined upon a suit being filed to that effect in the court of first instance, namely the High Court. The applicant cannot, in an appeal from a decision of the High Court pursuant to a land reference proceedings under s 38 of the LAA, where the issue of constitutionality was not raised, mount a collateral attack on the constitutionality of ss 40D(3), 49(1) of the LAA and s 68(1) of the CJA.

Counsel for the applicant argued that this issue is one of jurisdiction, and therefore can be raised at the appellate stage. However to our minds, counsel here is seeking to challenge the constitutional validity of the provisions of the LAA and not the jurisdiction of the court to hear the appeal.

Further, this would entail this court determining the issue in the exercise of its original jurisdiction which this court clearly does not have under the CJA.

[28] As for the second reason, that even if ss 40D(3), 49(1) of the LAA and s 68(1) of the CJA are constitutional there was a misdirection of law on the part of the learned judge when assessing compensation which renders the matter appealable.

[29] The three main factors cited by counsel in establishing misdirections of law are:

(a) Failure to appreciate development potential of the said land

Learned counsel contended that the learned judge had failed to appreciate that the category of land use of the said lands was 'bangunan' thus assigning the said lands to a lower value per hectare.

In addition, the learned judge also failed to consider that the said Lands had been approved for the construction of luxury bungalows which would bring with it an increased market value.

(b) Unjustified preference of government's valuation

According to counsel there were material deficiencies in the government's valuation of the said Lands which would render the award granted by the learned judge as unsafe and lead to a flawed calculation of the proper award of compensation to be paid to the applicant. For example:

(i) the government's valuer had determined the market value of the said Lands based on a figure of only RM40.50 smp when the figures for the neighbouring lots were set at RM59.31 smp and RM58.15 smp which were the figures for agricultural land with potential;

(ii) even then the government's valuer in determining the aforesaid figures of RM59.31 smp (as at 4 August 2000), RM58.15 smp (as at 30 January 1997)and RM49.43 smp (as at 15 June 1996) ought to have adjusted these figures so as to reflect the market value of these lands as at the date of acquisition which was on 23 December 2010; and

(iii) the government's valuer had reduced the market value of the said lands to RM405,000 per hectare and RM407,925 per hectare without any reasonable justification when two plots of comparable land PT 11042 and PT 11044 were valued at RM69.90 smp and RM90.65 smp respectively.

(c) Inadequate consideration of injurious affection

Learned counsel for the applicant contended that the learned judge failed to give sufficient consideration to the significant loss suffered by the applicant due to the compulsory acquisition of the said lands in that no structures can be constructed on the portions of the said lands not utilised for the highway project. In the event the applicant proceeds with the highway project the applicant would incur increased costs if they were to construct any buildings on or around the steep inclines of the elevated highway. The increased costs in carrying on with the applicant's project would result in a loss of profits to the applicant.

[30] With respect, we are unable to see how these factors constitute misdirections of law or give rise to questions of law.

[31] These are all factors which affect the quantum or amount of compensation to be paid out to an affected person under the LAA. That, in our view is not a legal issue nor does it raise any issue of law. The applicant's appeal

revolves entirely around the amount of compensation awarded by the court in particular the assessment carried out by the court in arriving at the amount awarded.

[32] In that regard the applicant's appeal falls squarely within the ambit of ss 40D(3) and 49(1) of the LAA and is, by virtue of the decision in *Calamas* and *Syed Hussein bin Syed Junid & Ors*, not appealable. In our view, to borrow the words of the Federal Court in *Syed Hussein bin Syed Junid & Ors*, '... the appeal herein is nothing more than an attempt to circumvent the salient provisions of ss 40D and 49(1) of the LAA which precludes any party from appealing against the award of compensation'.

[33] For the above reasons we upheld the preliminary objection of the respondent and dismissed the appeal with costs. As we had upheld the preliminary objection we did not feel it necessary to hear the appeal on its merits.

Appeal dismissed with costs.

Reported by Afiq Mohamad